

**UNITED STATES COURT OF APPEALS**

**JUL 19 2001**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

WILLIAM EDGAR BENSLEY,

Petitioner - Appellant,  
vs.

TWYLA SNYDER,

Respondent - Appellee.

No. 00-5129  
(D.C. No. 98-CV-27-B)  
(N.D. Okla.)

**ORDER AND JUDGMENT\***

Before **BRORBY, KELLY, and MURPHY**, Circuit Judges.\*\*

Mr. Bensley, an inmate appearing pro se, appeals from the denial of his habeas petition, 28 U.S.C. § 2254. He was convicted of possession of an intoxicating beverage in jail, after former conviction of two or more felonies, Okla. Stat. Ann. tit. 57, § 21 (West 2000 Cum. Supp.) and sentenced to 20 years. His conviction was affirmed on direct appeal by the Oklahoma Court of Criminal

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

Appeals (OCCA) in a summary opinion, and his state application for post-conviction relief was denied as procedurally barred by the state district court. On appeal, Mr. Bensley raises two issues rejected by the OCCA and the federal district court: (1) he was denied his absolute right to effective assistance of counsel when defense counsel failed to subpoena any witnesses to testify on his behalf, and (2) the State's evidence was insufficient to prove beyond a reasonable doubt that the substance found in Mr. Bensley's cell was intoxicating. Form A-15 at 3 & attach. A.

We have reviewed the record, including the trial transcript, and applied the standards in 28 U.S.C. § 2254(d) and Williams v. Taylor, 529 U.S. 362, 410-11 (2000). We DENY a certificate of appealability on the issues raised on appeal by Mr. Bensley for substantially the same reasons given by the district court in rejecting those same issues, R. Doc. 8, and DISMISS the appeal.

APPEAL DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge